

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 22 -1736

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on March 7, 2022 on the Application of **Solharvest Energy, LLC**, (the Applicant).

The Applicant is requesting a special exception to permit the development of a large scale solar energy system that will occupy approximately eighteen (18) acres with additional areas being used for access and required screening. This request is made in accordance with *Talbot County Code* (the *Code*) Chapter 190, Zoning, Article IV, §190-25, Table IV-I, §190-32.4 and Article VII, §190-56. The property is located at 12216 Cordova Road, Cordova, Maryland 21625 in the (VM) Village Mixed and (AC) Agricultural Conservation Zones. The property owner is Gordon Behrens, and the property is shown on Tax Map 5, Grid 24, Parcels 38 and 113.

Board of Appeals members Frank Cavanaugh, Chairman, Louis Dorsey, Jr., Vice Chairman; Paul Shortall, Zakary A. Krebeck and Jeffrey Adelman were present for the hearing. Anne C. Ogletree, acted as attorney for the Board of Appeals. Staff members present were Bryce Yelton, Planner II, a new member of the planning staff, Miguel Salinas, Planning Officer; Brennan Tarleton, Assistant Planning Officer, Elisa Deflaux, Planner II and Christine Corkell, Board Secretary. Zachary Smith, Esq. of Armistead, Lee, Rust and Wright, PA, 114 Bay Street, Bldg C, Easton Maryland 21601 represented the Applicant.

The Chairman inquired if all Board members had visited the site individually. He received affirmative responses from each member. Mr. Cavanaugh then requested that those planning to give testimony be identified and sworn. Mr. John Forgash, Mr. Brett Ewing and Mr. Zachary Smith were sworn.

Exhibit 1. Application for a Special Exception with Attachment A;

Exhibit 2. Tax Map with subject property highlighted (2 pages);

Exhibit 3. Notice of Public Hearing for Star Democrat;

Exhibit 4. Newspaper Confirmation;

Exhibit 5. Notice of Public Hearing and List of Adjacent Property Owners attached (3pgs);

Exhibit 6. Special Exception Standards with Attachment B;

Exhibit 7. Staff Report prepared by Elisa Deflaux, Planner II;
Exhibit 8. Planning Commission Comments;
Exhibit 9. Sign Maintenance Agreement/ Sign Affidavit;
Exhibit 10. Comments from Maryland Department of Transportation, Henry Decker, III;
Exhibit 11. Authorization Letter, (2 pages)
Exhibit 12. Independent Procedures Disclosure and Acknowledgement Form;
Exhibit 13. Aerial Photographs;
Exhibit 14. Letter from John Forgash, Solharvest Energy, LLC dated 1/14/22;
Exhibit 15. Site Plan prepared by Lane Engineering, LLC;
Exhibit 16. Power Point Presentation provided by counsel for Applicant.

Mr. Cavanaugh noted that Mr. Smith was going to be representing the Applicant, and asked that he proceed. Mr. Smith introduced himself. He also introduced Mr. John Forgash, principal of Solharvest Energy, LLC, as well as Brett Ewing and Wade Barnhart from Lane Engineering, LLC. Mr. Smith explained that the Applicant was requesting approval for a “large scale” solar energy system. In the *Code*, The term “large scale” solar energy system is any system producing two (2) megawatts or more electric power and covering more than ten (10) acres. In actuality, a ‘utility scale’ solar system is what one ordinarily thinks of as a ‘large scale’ system. It may cover many acres. The system proposed is a ‘community scale’ system and is planned to generate two (2) megawatts of power. It will occupy approximately eighteen (18) acres, so that the proposed use fits the statutory definition of a “large scale” system in the *Code* although it is many times smaller than a ‘utility scale’ system that might occupy hundreds of acres. A large scale solar system is a use permitted by special exception in the VM (Village Mixed) Zone. The property in question is located in the VM Zone.

As a special exception, the use must be presented to the Planning Commission and then the Board for approval of the use, and then must return to the Planning Commission for site plan approval. The Applicant has received a favorable recommendation on the issue of use from the Planning Commission, but will return to that body for final site plan approval. That return may well be delayed, as the County Council is considering a moratorium on solar energy systems at its next meeting (March 8, 2022). The moratorium will not affect the Board’s decision on use, but, for this project, it will prevent further development activity, including site plan approval. The projected length of the moratorium is five (5) months, at which time the Applicant will move forward with the site plan review. Mr. Smith then invited Mr. John Forgash to explain the project.

Mr. Forgash, is a principal of Solharvest Energy LLC. (Solharvest or the Applicant). The business is located in the Patriot Building, 1721 Tuckerton Road, Medford New Jersey 08058. The business focuses on distributable renewable energy generation on the distribution grid rather than the transmission grid. These projects are net metered, and generally fall under the two (2) megawatt size. Solharvest has been involved in the Maryland market since the inception of the community solar program - about five (5) years. The company is assisting the state in developing the program and is a participant in the net metering group through the Maryland Public Service Commission. The witness had approximately thirteen (13) years experience in the renewable energy field, including both solar and wind systems.

Mr. Forgash identified the other members of the project team: Mr. Behrens, the property owner, Mr. Smith, Brett Ewing and Wade Barnhart from Lane Engineering and Steve Hazel, the electrical engineer, who is assisting with electrical design to insure the project meets the two (2) megawatt limit and incorporates the most up-to-date technology.

The witness explained that in terms of large scale solar projects there are two options- the utility scale system – large projects covering many acres and generally connected to the transmission grid. They focus on wholesale energy transactions. Community solar projects generate two (2) megawatts or less – in Maryland this includes net metered projects such as the one proposed for the Behrens site. The energy produced from the community scale project will offset the cost of energy for specific subscribers who sign up to purchase energy from the project. At maximum, the project will offset the use of approximately four hundred (400) retail subscribers.

Mr. Cavanaugh asked if ‘metered energy’ was the term generally used to refer to energy produced on a specific site. The witness agreed, however, in this type of project the subscriber will receive credit for the energy produced by the project even though it is not located on the subscriber’s own property. This program is designed to allow more customers to buy renewable energy even though they may not have the ideal roof or backyard for a solar system. This program allows a number of customers to participate in the use of and benefits of a solar energy system by buying energy from a centralized location. The Maryland program requires that the benefits of renewable energy be available throughout the state and in all the various territories served by major power companies. If the program is fully utilized, there are expected to be three hundred (300) community scale systems coming on line throughout the seven (7) year pilot program. About fifty (50) megawatts capacity has been allocated to the Delmarva Power and Light (DP&L) operating territory.

Mr. Cavanaugh asked if the acreage for this project will be deducted from the maximum acreage the Council has allocated for the use of farmland for solar projects. Mr. Ewing responded that the acreage cap does not apply in the VM Zone, so the acreage used for this system will not be deducted from the total allowable. Ms. Deflaux added that the cap applies in the Conservation Districts, but not in the Village District.

Mr. Adelman asked if Solharvest will be the operator of the project. The witness stated that the company is the developer. The developer will partner with a long term owner-operator with the requisite experience to successfully operate the project. That entity has been identified, and would come on board at the appropriate time.

Mr. Forgash identified the project location as shown on the power point presentation (Exhibit 16). He reviewed the significant details of the proposed system. The parcel chosen for the system is in the VM (Village Mixed) zone. It will be a photovoltaic system using single axis tracking so that the panels will follow the sun from east to west. The maximum capacity will be two (2) megawatts. The fenced area is approximately eighteen (18) acres. The utility to which it will be connected is DP&L. The Applicant has submitted an interconnection application to tie into the utility's 25 KV feeder line that runs along Cordova Road. The application is in process at the current time and the Applicant is awaiting the cost estimate for the connection. To make the system economically feasible approximately four hundred (400) residential subscribers will be required. This project is in line to receive the grant of capacity required and expects to receive that grant early next year. If the project approvals and construction go as planned, the system would be active in late 2023.

Planning the site for the project has taken access points, viewshed, noise and glare into account as well as considering how the project will be integrated into the local community. The Applicant's analysis has been aided by the team members who have been most helpful in planning the site, suggesting appropriate landscaping, and researching and establishing setbacks for the project. The Applicant is aware that the land use issues are currently fluid as they will be reconsidered by the County Council during the moratorium, and welcomes the opportunity to provide information that may assist the Council in tightening the regulatory scheme.

Mr. Adelman asked if the County's pending study and legislation would require the Applicant to return to the Board. Mr. Smith responded that it might be possible, but felt that it would be unlikely. His understanding at this point is that there is no plan to curtail solar development, but the focus is to create adequate standards. He was aware of some discussion of a

payment that might be imposed to offset the loss of farmland. He added that if there were substantial changes that might require the Applicant to return to the Board, it was certainly willing to comply.

Mr. Forgash continued, noting that the issue of project 'decommissioning' was built into the lease with the landowner. Lease payments to the landowner will continue until the entire system has been removed. The Applicant anticipates that a bond will be put in place to ensure that the entire project is removed and the land is returned to agricultural use.

Mr. Adelman asked if the decommissioning agreement was between the Applicant and the landowner. Mr. Forgash confirmed that the agreement was with the landowner, and stated that the obligations of the developer would transfer to the new owner. Mr. Adelman asked if the witness was familiar with other decommissioning plans and the requirements of those plans. He received an affirmative answer. Board's counsel asked if the County was also named. Mr. Forgash added that it might be discussed at the site plan stage.

Mr. Smith commented that the *Code* had requirements for decommissioning that are mandatory for all plans, and confirmed that the plan would be presented as a part of the site plan review. The Chairman agreed, stating that the County regulations require financial responsibility, and the obligation for removal and costs follows the parties involved. The witness assured the Board that the Applicant would provide the plan. Board's counsel commented that the decommissioning plan was a requirement. Mr. Smith agreed that it was required before development could take place, and would be addressed at the site plan stage.

Mr. Smith told the Board that Mr. Ewing was to be the next witness for the Applicant. He would be asked to provide site plan detail as well as a synopsis of the hearing before the Planning Commission.

Brett Ewing, Lane Engineering, LLC, 117 Bay Street, Easton, MD 21601 told the Board that Lane had worked with the Applicant and Mr. Smith to review the *Code*, identify all required elements and suggest how they might be handled on site. He noted that there was substantial focus aimed at preserving the agricultural operation that currently exists on site, and reducing the possible impacts to the community as a whole.

Addressing the current proposal, Exhibit 15, the witness pointed out that the project was aligned on an east-west axis with a goal of keeping it as far from the Asche Acres/Mansfield Road corridor as practicable while also creating a separation from the Heinsohn site. The purpose

of the alignment was to reduce the visual impacts on those properties. He pointed out an agricultural irrigation pivot in the center of the parcel and felt that the proposed design would allow that pivot to be used to service the remaining acreage that is to be kept in agricultural production.

The witness pointed out the proposed one hundred fifty foot (150') setbacks from the property lines. The northern side, Parcel 38, is owned by Mr. Behrens, and the *Code* allows the setback to be reduced to twenty-five feet (25') with the adjoining owner's permission. Addressing screening, Mr. Ewing pointed out that the *Code* requires specific screening. The plan shows evergreen screening – two rows of staggered evergreen trees six (6) feet in height with low lying native vegetation mixed in. The concept is to allow that area to 'go natural' and allow grasses and volunteer plants to infill. The witness believed that the Applicant had complied with all the screening and buffer yard standards set out in the ordinance.

Another *Code* provision requires a security fence. The proposed fence is a six foot (6') chain link fence. There is a proposed twelve foot (12') gravel access road to the site from Connolly Road. Following construction the access will be used very sparingly, perhaps once or twice a month for maintenance and repair. The traffic generated by this site will be minimal, and less than most other uses permitted in the VM zone. Mr. Adelman asked what maintenance activity was anticipated. Mr. Forgash responded that access would be by pickup truck to monitor the condition of the panels. Most of the operation is handled remotely. Once construction is over only occasional use is anticipated.

Mr. Ewing pointed out that below, between and adjacent to the panels in the panel enclosure there would be a 'meadow mix' grass employed to comply with a state standard that requires a pollinator habitat mix within the project boundaries. The witness stated that storm water management will be required at the site plan stage, and felt that it could be easily achieved on the proposed site. No runoff issues are anticipated. The witness believed that the proposal met all the requirements of the *Code*.

Mr. Smith informed the Board that at the Planning Commission hearing on the use issue, Mr. Councill, the Planning Commission chairperson, expressed concerns about the proposed site layout believing it could be improved to be less disruptive to farming. He suggested the operation might be shifted north, as it would be the least disruptive to the farming operations. The Applicant informed the Commission of three important reasons for the proposed layout - (1) the current configuration provided the necessary setbacks; (2) the Public Service Commission

requires that the project and panels be located on one parcel and there is not enough acreage in the northern parcel to comply with that requirement; and (3) although the use is a permitted special exception in the AC District, both the *Code* and the County's Comprehensive Plan direct growth to the incorporated towns or the villages. Cordova has VM zoning. That zoning allows the most intensive uses permitted in villages. This proposed use fits nicely in that use district.

The Planning Commission also directed the Applicant to consider pushing the project to the west and turning it so that it would abut adjacent farm land and be less disruptive to the on-site farming operation by keeping the project entirely on Parcel 113. The Commission directed the Applicant to consider the alternatives when it returned for site plan review. Given the very short time between the Planning Commission and Board hearings, the Applicant has not had time to provide a reconfiguration of the site layout, but will begin that design effort shortly.

Mr. Ewing commented that he thought Mr. Councell was thinking of a more north-south alignment for the panels and must have thought that changing the alignment would potentially add a few more acres of farmland. The designers are going to revisit that issue and try to come up with a proposal that maximizes the agricultural land and preserves the pivot for farming use.

Mr. Forgash added that a new design might also set the project farther back from Cordova Road, and would help the project blend in more easily. The realignment would enable the irrigation system to continue to provide water to the northern parcel (Parcel 38). There was a suggestion made that the buffer be reduced to twenty-five feet (25') and that possibly some of the buffer trees might be eliminated. Mr. Smith noted that the suggestion of reducing the buffer and/or screening would require the agreement of the adjoining landowner, but that Mr. Councell, also a farmer, thought it would be advantageous to the neighbors and believed they would readily agree. If the adjoining owner does not consent, the setback would remain at one hundred fifty feet (150').

Mr. Cavanaugh asked if there would be an adverse effect on the connection to the DP&L power line should the setbacks be greater. Mr. Forgash stated there would not. The interconnection design requires three (3) or four (4) overhead poles set approximately twenty-five feet (25') apart along property line. The wiring will run underground from the last pole back to the fenced area where the onsite equipment is located.

The Chairman understood that no substation would be required for a two (2) megawatt system. Mr. Forgash agreed none would be needed. The connection is a simple line tap – one of the benefits of a smaller system. He explained that this is a 25 KV line and can usually handle up

to six (6) megawatts of generation. DP&L has provided a capacity map showing six (6) megawatts of capacity on this line. When one applies for interconnection, studies are performed to confirm the capacity.

The Chairman asked if DP&L was required by the Public Service Commission to allow interconnection. The witness answered that the utility is required to allow interconnection, and that it is required that it facilitate community scale systems -- if a system qualifies it must be given capacity under that program. However, the utility is not required to underwrite the cost of interconnection. If there is a lack of capacity, or a substation that cannot handle the load, the project does not go forward. DP&L currently has six major distribution lines in Talbot County. Perhaps three of those lines adjoin properties where one could realistically develop this type of project. Approximately ten (10) to fifteen (15) megawatts of capacity is available on suitable distribution lines in the county. Given those statistics, there might possibly be five (5) to seven (7) additional projects within Talbot County under the current program.

Mr. Cavanaugh asked when a substation would be required. The witness responded that voltage determines when one is needed. Above 69 KV a substation is necessary and the cost of interconnection to that line would be prohibitive for a smaller system. Above 69 KV one connects to the transmission grid. Smaller systems, such as this project, connect to the distribution grid. The Chairman noted that the County is not encouraging larger projects, and that is why there is an acreage cap.

He next inquired about the landscaping surrounding the perimeter of the project. Was the entire perimeter screening required, or could the landscaping have been designed around the solar panels themselves? Mr. Ewing stated that the county has buffer yard requirements that mandate the landscaping be placed along the property line. They are shown in this location to satisfy both the solar site requirements and the development buffer yard requirements. He noted that at the Planning Commission there was discussion about removing the buffer yards altogether, as they adversely impact the farming operations on this and the neighboring parcels. Mr. Cavanaugh commented that buffers have been an issue in other solar projects. One of the reasons the county mandated the size of the evergreen trees to be used is that as there have been solar installations in place for over ten (10) years where the trees are still only two feet (2') high.

Mr. Forgash said that the Applicant had no intent to eliminate the entire buffer around the project. A targeted buffer had been suggested -- placing it where it made the most sense, but not surrounding the entire project. He felt that completely surrounding the property would adversely

affect the irrigated area, especially as the trees grew. The Applicant's design had tried to "stay out" of the irrigation circle area for that reason.

Mr. Smith said that the discussion had also touched on possible difficulties in returning the area to farmland once decommissioning took place. The Chairman agreed, mentioning that the ease of returning the land to agriculture was a consideration for the County. This particular site has class one soils – the most productive in the County. Mr. Smith clarified that the Planning Commission is not advocating that all buffers be removed. Buffers adjoining residential properties and along roadways need to be maintained. The general concern was that some of the buffers were cutting into the use of agricultural land, and should possibly be minimized or deleted.

Mr. Cavanaugh asked if Cordova Road was one of the County's scenic byways. A staff member responded that it was not. The Chairman then asked if the landscaping would be only the minimum height required and whether there was a survival requirement. Mr. Ewing responded that the minimum required by the *Code* is six feet (6'). That is the height of the suggested plantings. The *Code* does have a survival requirement. Once one has an approved landscaping plan one is required to maintain and replace as needed. Mr. Forgash stated the Applicant was willing to discuss targeting the landscaping to provide the required screening while considering the overall effect on agriculture on the site as well as on neighboring farms.

Mr. Smith wished to revisit the decommissioning plan before reviewing the requirements for the special use exception. *Code* §190-32.4 requires the County to approve the plan. While the County is not a party to the plan, the financial assurances required do benefit the County. Mr. Krebeck asked if the financial assurance was in the form of a bond. Mr. Smith said it could be bond, letter of credit or cash – or some form of surety acceptable to the County. Mr. Cavanaugh observed that he believed it had to cover one hundred twenty-five percent (125%) of the estimated removal cost.

Mr. Smith directed the Board's attention to the written responses provided by the Applicant and to the Staff Report, Exhibits 6 and 7. In terms of compliance with the Comprehensive Plan, the use was reviewed by the Planning Commission and approved. He noted that the Board has generally deferred to the Planning Commission decisions regarding conformity with the Plan in the past. The area is zoned VM (Village Mixed), and has been identified as appropriate for some level of development by the County. This development is permissible at this location. Mr. Ewing provided testimony concerning compliance with the County's site standards,

and the project will return to the Planning Commission for final site plan approval in the future, and will have to meet the current standards or any new standards developed and enacted by the County at that time. Since the property is located in the VM zone, where other more intense uses are permitted as of right, the scale and bulk of the project will be consistent with other uses in the area. The proposed use is also compatible with agriculture. More than half of the two parcels will remain in production. The issue of screening to protect adjacent residential uses has been discussed, and every effort has been made to minimize any impact on neighboring property. The proposed setback is one hundred fifty feet (150') and the closest residence is approximately four hundred feet (400') from the fenced enclosure.

Mr. Smith asked Mr. Forgash to touch on possible nuisances emanating from the site such as noise, odor, glare and vibration. The witness stated that photovoltaic technology's primary purpose is to absorb light so that there is no glare. The inverters will make some noise, as will the tracking, but it will not be audible beyond the enclosed area. There will not be any odor. No installed lighting is planned for the facility. Mr. Krebeck asked if the tracking itself would also minimize glare. The witness agreed it would. Mr. Krebeck asked if the reduction in glare is due to the fact that the panels would be almost perpendicular to the sun's direct rays. The witness agreed.

Mr. Smith next addressed the possible impacts on public facilities and services. Mr. Forgash responded that there would be no impact on schools or roads. The facility is not manned. The only impact on roads following construction would be the bi-monthly repair and maintenance inspection trips. Mr. Smith referenced Exhibit 10, a letter from the Maryland Department of Transportation indicating no objection to the proposed use.

Mr. Cavanaugh asked if the line that taps into the distribution grid would be under the roadbed. Mr. Forgash responded that the 25 KV line is on the same side of Cordova Road. Mr. Ewing commented that there might be a small incursion into the road's right of way. The four (4) new poles will be in the right of way for about one hundred feet (100'). The feeder that taps into the utility's line will be underground as will the line that runs back to the project enclosure. The overhead poles would be placed so that lines do not cross the property or interfere with the irrigation.

Mr. Smith asked Mr. Ewing to confirm that access to the project will be off Connolly Road, a county road. The witness stated that the current proposal is for a twelve foot (12') gravel roadbed accessed from Connolly Road. A county road access permit will be required as will a

culvert to bridge the ditch. The proposed entrance is several hundred feet distant from the Cordova Road intersection. The sight lines are relatively straight in that location, and with the light traffic anticipated there is no adverse impact expected. The access is similar to other driveways in the area, and does not conflict with or intersect any other entrance or exit.

Mr. Smith addressed the ninth standard asking if there was any adverse effect on vegetation or wildlife. Mr. Forgash stated there would not be any detriment caused by the project. A portion of the site will remain in agricultural production, and the enclosed area will be planted with a pollinator mix. Mr. Smith then addressed the tenth standard dealing with the project's effect on agricultural land and neighboring farms. He noted that the larger part of the subject property would remain in agricultural production. There is an agricultural property to the west. Mr. Smith queried Mr. Forgash regarding the compatibility of a solar system and adjoining agricultural uses. The witness stated they are compatible. Having reached the end of his prepared remarks Mr. Smith advised the Board that the Applicant would be happy to answer any questions they might have.

Board members had several questions. Mr. Shortall asked how tall the six foot (6') trees would get when fully grown. Mr. Ewing responded that the species had not yet been determined, but if it were white pine, the average height at maturity was twenty-five (25') to thirty feet (30'). Mr. Shortall related his experience with screening planted ten feet from the property line of a parcel subdivided from a farm he tilled. As the trees grew to forty (40') or fifty feet (50') in height they extended into the field shading the crops. Mr. Shortall explained that soybeans and wheat will not ripen without sunshine, and the wooded screen proposed would affect crops all along the western and northern property lines. He was concerned that the neighbors were going to lose twenty-five (25') to thirty (30') feet of productive crop land all along the wooded boundary due to the shade. Mr. Shortall did not see the point of having trees around Denny's or Heinsohn's property if they objected. Trees should be placed where effective.

Mr. Ewing stated that the Applicant was willing to work with county staff to minimize the effect on the neighboring farms. Mr. Smith commented that Mr. Shortall and Mr. Councill had similar concerns. The proposed plan was developed to meet current County standards. He hoped that during the moratorium new regulations would be developed to address this issue, and believed that Mr. Councill would insist that the County examine the issue. Mr. Smith was not certain all the trees would be required. The Planning Commission has the ability to waive the screening requirements, however, it is the Applicant's obligation to show the screening on its

initial proposal. He explained that the Applicant agreed with Mr. Shortall's concerns and would be agreeable to removing portions of the screening from the revised proposal.

Mr. Shortall wanted to know if people in Cordova were required to buy into the operation. Mr. Forgash responded they were not required to do so, but that anyone who was a DP&L customer would have the opportunity to buy energy from the project. Mr. Smith added that there is no obligation to do so.

Mr. Dorsey had a question regarding site maintenance. It was his understanding that the owner intended to plant grasses around and under the panels. The witness confirmed his understanding. Mr. Dorsey drew the Applicant's attention to *Code* §190-32.4 A 5 regarding site maintenance. He suggested that the Applicant have a discussion with the property owner concerning maintenance, as the *Code* makes that person, Mr. Behrens, jointly and severally responsible for maintenance. Mr. Smith asked Mr. Forgash if the lease obligated the system's owner/operator to cover maintenance and received an affirmative answer. Mr. Dorsey suggested that the lessee's obligation for maintenance be made a condition of the special exception, if granted.

The next question raised by Mr. Dorsey concerned compliance with standard number three. He believed the standard had three elements since the standard requires (1) conformity with scale, bulk and general appearance of land uses in the area; and (2) conformity with existing and potential land uses in the general area; and (3) the proposed use would not be detrimental to the economic value of neighboring properties. He asked the Applicant to address the effect on value of neighboring properties.

Mr. Forgash explained that when completed, the system would properly utilize the VM (Village Mixed) zoning, providing a benefit to the community by generating energy and screening and maintaining the site. Mr. Dorsey asked if there were studies made by the Applicant on the effect of the system on the value of neighboring properties. The witness responded that Solharvest had not commissioned any studies, but that studies had been done in other areas of the state and country, and that no detrimental effects had been observed. Mr. Smith chimed in stating that he had looked at the same question earlier in the day. He produced an article regarding utility scale systems – systems many times larger than that proposed - and citing studies that found there was no decrease in value of neighboring properties due to the existence and location of those systems. One of the studies dealt with rural areas specifically and found no decrease in value in those areas. He mentioned that the article did identify screening and setbacks as tools that could

help to ameliorate any concerns. He offered Applicant's Exhibit 1, a copy of that article as an exhibit. The exhibit was admitted.

Mr. Dorsey wished to know how the Applicant planned to install the panels so that waterfowl would not believe the panels were a pond. That issue had been raised in other hearings regarding solar installations. The witness responded that Mr. Dorsey asked a good question, but that he had not observed that to be an issue. He explained that the single axis tracking system caused slight movement throughout the day and helped to alleviate those concerns. Mr. Adelman asked the witness about the axis of rotation. The witness responded that the panels moved fifty-two (52) degrees from east to west.

The Chairman asked if the members had any other questions. Mr. Krebeck stated he did. He wanted to know how storm water management was handled on solar farms. He understood Mr. Ewing to say there would be no retention structures, but that most water would be handled by infiltration, and that the plantings underneath the panels (to the extent they survived) would be able to handle the run off. Mr. Ewing agreed, explaining that these were class one soils that provided good infiltration rates. The method generally used for this type of soil is an infiltration disconnect. There is a minimum amount of runoff coming from the panel, and as long as there is an amount of ground surface equal to the surface of the panel the ground surface is enough to address storm water according to state law.

Mr. Krebeck expressed concerns about the amount of redesign that might be required. He was uncomfortable simply giving a 'carte blanche' for design and would recommend conditions. He felt that possible changes engendered by the County Council's upcoming study and consideration needed to be addressed as did the fact that the Planning Commission would expect the design to address agricultural concerns in the site plan review. He was trying to formulate the language for those conditions.

Mr. Cavanaugh asked if the Board members had additional comments. Hearing none, he asked members of the public who wished to be heard to come forward and be sworn to give testimony.

Mr. Lee Heinsohn, 12508 Blades Road, Cordova, Maryland 21625 had a couple of questions and/or comments. Mr. Heinsohn agreed with Mr. Shortall's comments about trees on the buffer. Although the trees start out at six feet (6'), they will grow forty to fifty feet (40'-50') high and they will spread possibly up to forty feet (40'). They will encroach on the adjacent

landowner. His suggestion was that they be planted far enough from the property line that they would not overhang when fully grown.

He also wished to clarify that there is currently no proposal to put panels on Parcel 38. Mr. Cavanaugh confirmed that the current proposal was not to have panels on Parcel 38. The witness also wished to be certain that no exterior lighting was proposed for the project. Mr. Cavanaugh stated he believed the *Code* addressed the issue and invited Mr. Ewing to comment. Mr. Ewing confirmed that the Applicant was not proposing any lighting whatsoever on the site. Mr. Cavanaugh commented that the *Code* does require some small warning signs on the fence, but does not require lighting. He complimented Mr. Heinsohn, explaining that the witness had an excellent point regarding the landscaping and the buffer. The original intent of the screening and buffering was to screen the panels from the view of neighboring residences and highways. In the instant case it defeats the purpose of preserving agricultural land.

Mr. Cory Heinsohn, 12320 Connolly Road, Cordova, MD 21625, owner of the property just to the north of the proposed site agreed with Mr. Shortall about the trees. If the application is approved he would rather have no trees at all along his property line. Mr. Cavanaugh stated he appreciated the witness's comments and felt the same way as he had to deal with leyland cypress planted on the property line by an adjoining neighbor, and knew that those trees were encroaching on his property. The original intent of the regulations was to preserve as much farmland as possible. This plan seems to defeat that goal, as pointed out also by Mr. Shortall.

Mr. Cory Heinsohn asked how long the panels were to be on the site and for how long they were usable. Mr. Forgash responded that the community solar program runs for twenty-five (25) years. That is the length of a subscriber's agreement to purchase energy. There might be an opportunity for the program to last more than twenty-five (25) years, possibly as long as forty (40) years. The time frame also might be limited by advances in technology. Mr. Adelman commented that one could easily expect a life of twenty (20) years for this system. Mr. Forgash explained that the panels had a twenty-five to thirty (25-30) year warranty, and at the end of that period they would still be producing about eighty percent (80%) of the power for which they were originally designed. Mr. Cavanaugh stated that regardless of the useful life of the components, if the project were to become defunct, the bond would kick in to take care of the removal. The panels would never be left on site even if the project were abandoned.

Mr. Shortall asked if the agreement to decommission followed the land, as ownership might change for any number of reasons. Mr. Cavanaugh understood that the obligation follows

the land, and when the regulations were originally enacted the bonding process was discussed and required so that the record owner of the property is obligated, as is the lessee. He believed that staff could confirm that the bond is required. Mr. Tarleton, Assistant Planning Director, agreed. The bond references the property owner as well as the owner-operator of the solar system at the time of removal. Mr. Forgash reiterated that the lease does run with the land.

The witness, Mr. Cory Heinsohn, had an additional question regarding Parcel 38. He wished to know if it was to be planted in the meadow mix/grassland, or whether it would be maintained as cropland. Mr. Forgash stated the use of Parcel 38 would be up to the landowner. It was originally included to enable the landscaping to protect the adjoining northern parcels, as well as permit the irrigation system to swing through its original three hundred sixty (360) degree arc once the panels are removed.

Mr. Shortall asked if the irrigation system would cross over the panels as currently proposed. He received a negative response. He asked how the system would get to the nine (9) acre parcel with the existing layout. Mr. Barnhart stated it would not. Mr. Shortall observed that the nine acre parcel might be farmed while the project operated, but would not be irrigated. Mr. Forgash explained that this concern had been brought up at the Planning Commission hearing, and it had been suggested that if the alignment was changed the irrigation system would be able to service at least part of the northern parcel.

Mr. Heinsohn asked Mr. Forgash to explain the benefit of buying energy from the community system rather than DP&L. The witness responded that there would be a discount right up front in buying directly from the community system. Mr. Heinsohn asked if DP&L was comfortable with the community system using the utility's distribution lines to sell energy at a cheaper rate. The witness stated the state program permits that practice. Mr. Cavanaugh added that the utility companies are not excited about the program, but that there are state regulations that require them to allow the community systems to use their distribution lines. The witness added that it also permits the subscriber to buy renewable energy as well as obtaining a discount.

Mr. Heinsohn commented that in the utility scale system in Queen Anne's County he has observed about one third of the panels do not seem to track with the sun. Is that a concern for this project? Mr. Forgash commented that for this system to operate efficiently and produce the energy for which it has been designed the components have to work properly. The Queen Anne's County system is utility scale system and must produce a certain amount of energy each year. He

opined that the owner of the system would do everything possible to have the system achieve its energy goal.

Mr. Heinsohn reported he had heard of three (3) or four (4) other solar systems coming into the Cordova area, all supposedly within two (2) miles of the site. Mr. Forgash was unaware of any other systems in the area. Mr. Cavanaugh explained that the County was not going to be overrun with solar panels. The County has regulations regarding where the systems can go, and those sites are limited since the systems have to be close to utility transmission lines or substations. They just cannot spring up anywhere. Outside of the VM and village zones the county does have a cap on how much acreage can be used for solar systems. The County explored this concern with studies during 2016.

Mr. Forgash added that on Delmarva there is limited interconnection capacity. Some transmission lines are saturated and cannot handle more generation, and some capacity has already been reserved by other projects. The difficulty of interconnecting under these circumstances is limiting.

Before retiring, Mr. Cory Heinsohn stated he would like to see Mr. Councill's suggestions on paper, but was aware they were not the subject of the hearing. Mr. Cavanaugh asked if there was anyone else who wished to speak or who had questions.

Mr. Edward D. Roe, 8565 King's Court, Easton, MD 21601 is a farmer working in the Cordova area. He was sworn. He had been approached about a system initially but wanted nothing to do with the project. He, personally, was against it. He asked Mr. Forgash why the project couldn't be limited in size to less than ten (10) acres.

Mr. Forgash explained that, at the current time, the technology does not allow smaller projects to make economic sense. On Delmarva the interconnection costs are very high even on the distribution lines. Additionally, even for a two (2) megawatt project there are many other things that have to coincide in order for the project to work. If one talks about a utility scale system on a transmission line a substation is going to be required. Interconnection costs for that type of system are going to be in the range of six to seven (6-7) million dollars. The project also has to generate electricity at a cost low enough for the market to be interested in buying it.

Mr. Roe asked why the project could not be relocated to an area with more infrastructure. Mr. Forgash explained that community systems would be built throughout the state. He acknowledged that finding the right location is a balancing act. Mr. Smith asked if this project

was required to be located within DP&L's territory and received an affirmative response. Mr. Cavanaugh stated he was aware that a certain number of acres were required to generate a megawatt of power. Mr. Forgash commented that Maryland had certain renewable energy goals, and all types of renewable energy would be required to achieve those goals. The Chairman agreed stating that Maryland has mandated that renewable energy has to provide a certain percentage of power by a certain date. Some of the Eastern Shore counties have been concerned that the Shore would be required to accept an 'unfair' share of that obligation and have been working together to ensure they would not be overburdened.

Mr. Forgash explained that the industry is aware it needs willing partners to achieve the goals. The industry is also aware that the development of projects is not universally accepted as a good thing. Personally he believes it is a good thing and wishes to give others the benefit of purchasing power at a lower cost.

Mr. Shortall asked if the Applicant has been involved in any of the utility scale projects. The witness acknowledged that he, personally, had been involved in the early stages of the Queen Anne's County project. He was not involved in any larger scale projects in Talbot County.

After ascertaining that there were no additional members of the public who had questions or who wished to testify, Mr. Cavanaugh solicited comments from the Board members beginning with Mr. Shortall.

Mr. Shortall believed this to be a good system. There is a small solar system on one of his farms that is used to power the house and barns and other structures. That system works well. He has seen no glare from the panels at all. Here there are concerns about the impacts to the neighboring farms that must be taken into consideration. The tree buffer is problematic. In his experience one of his farms lost two to three (2-3) acres when the buffer matured and shaded the crops. The grain will not ripen, although it will grow. He did not believe it was necessary to put trees along a boundary if the farmer next door did not want them. He believed that the adjoining owner should have the right to say he didn't want the trees if they would affect him.

Mr. Smith responded that the Applicant was only trying to comply with the County standards and would be happy to consult the neighbors about the use of trees on their boundaries. The Applicant would consent to no trees at all if that was what the County approved. Mr. Shortall commented that a wind system had been tried in Talbot County. Due to lack of wind, it failed. He has no objection to the solar systems provided that the neighboring farms are not adversely

affected by the screening trees. He wanted that comment to be made a condition, but was unsure as to the wording.

The Chairman agreed with Mr. Shortall. The effect on the neighboring farms is an unintended consequence of the requirement for landscaping. It was intended to protect the public from the view of sites that are close to roads or homes. Completely surrounding some sites will adversely affect the property next door. The concept needs to be tailored to each project and the Board will have to verbalize that concept in its conditions. He asked Mr. Krebeck to comment.

Mr. Krebeck opined that he was hearing a consensus from the members that the site design needs to be amended. The Planning Commission will look at those details in the site plan process. The Board can't redesign the site at this hearing. He suggested a condition because an adjustment needs to be made for preservation of prime farmland. In this case the Board needs to say specifically that the proposal can be amended by the Planning Commission for this purpose. Otherwise there is a possibility that the final product will not resemble anything the Applicant has proposed to the Board.

Board's counsel asked if the condition is to state that the site plan must be amended, or should be amended, or might be amended by the Planning Commission. Is the amendment mandatory or permissive? Mr. Krebeck stated he had written 'may' but wished to know if the other members thought it should be required.

Mr. Adleman stated he believed the question to be whether any realignment of the solar panels on the site would materially change any of the standards addressed by the Board in the special exception process. He was not sure that a reconfiguration would materially change any of the elements that had been discussed by the Board, and if it did, the matter had to return to the Board.

Mr. Krebeck agreed, and explained that he was trying to find the correct wording for that concept. He also felt that there needed to be a condition acknowledging that the County Council was embarking on a study that could result in new material that also would need to be incorporated in the site plan, and that addressing those new provisions would not necessarily require coming back to the Board. Board's counsel noted that if the changes affect the use, the matter would have to return to the Board. Mr. Krebeck agreed, stating that if it were a matter of site design, the Applicant would not necessarily have to return to the Board even if it resulted in

additional design changes required by zoning text amendments or the Planning Commission. Mr. Krebeck wanted to be sure that the record reflected the Board's understanding that some site design changes would have to be made and those would not require a return to the Board unless they affected evidence already presented regarding compliance with the special exception. Standards.

Mr. Dorsey agreed with his fellow Board members regarding the trees, but believed the Planning Commission had addressed that situation in its comments. He felt that compliance with the recommendations of the Planning Commission should be made a condition if the Board wished to grant the special exception. Maintenance of the site by the owner –operator of the system and the landowner as required by the *Code* should be made a condition as well. A decommissioning plan is required, and submission of that plan should also be a condition.

Mr. Adleman suggested that the Board modify its usual condition requiring construction to be commenced within eighteen (18) months due to the uncertainty surrounding the anticipated moratorium. Counsel suggested the eighteen (18) month period should run from approval of the site plan. Mr. Adleman agreed that would be more practical.

Mr. Cavanaugh commented that he had reviewed the *Code*, the state law, and the Council's proposed legislation. He felt that the proposal checked all the correct boxes. He had no problems with the request, but did have concerns about the landscaping. He noted that the Planning Commission as well as the Board had left things a bit open ended. There are two areas of concern – the physical location and alignment of the panels, and the issue of trees. The original purpose of the screening was to protect the view from other properties. However, as Mr. Shortall had pointed out, the trees proposed here surround the perimeter of the site and affect a lot of agricultural land – not only this property but the neighbors' farmland as well. The Board should not impose any burden on those adjoining properties, but it is not the Board's function to approve the landscaping plan. He wanted to make it clear in the Board's opinion that the use of the property for a large scale solar system was acceptable to the Board provided that the redesign takes into account the location and alignment of the panels, and takes the neighboring farms into consideration when recommending the location of the buffers and appropriate screening.

Counsel suggested that the Board's findings of fact should recognize that the issues identified by the Board and the Planning Commission require further study. It is anticipated there will be a redesign of the site, and that will be subject to the decisions and recommendations made by the appropriate authorities involved, including the County Council and the Planning

Commission. Given the unique circumstances involved, the Board approves the solar project although it recognizes the need for site design modifications in the site plan review process to address the issues raised at this hearing.

Mr. Cavanaugh inquired if Mr. Shortall agreed with the suggestion. Mr. Shortall did, but felt strongly that the neighbors should have something to say about the screening trees, both as to location and as to whether they are needed at all. If the trees are simply moved back into the property, more agricultural land would be lost on site. Mr. Cavanaugh agreed.

Board's counsel suggested that perhaps a finding could be worded to make clear the Board is requesting the Council consider the effect of screening on owners of adjoining agricultural lands. The Board does not have the authority to require they be consulted even though it believes that to be the appropriate thing to do. The Board does have the ability to ask that the Council and Planning Commission look specifically at the effect of screening on adjoining agricultural land.

Mr. Smith commented that the County has requirements, and the Applicant has to meet those requirements. Sometimes the Board of Appeals grants relief through variances. In the case of landscaping, the Planning Commission has the authority to grant a waiver. The Applicant is happy to comply with the Board's suggestions. He suggested that the Board recommend to the Planning Commission that a waiver should be considered here.

The Chairman agreed. He did not want to do away with the requirement for landscaping but there are cases, such as this case, where the landscaping has a detrimental effect on agriculture. This is the opposite of what the Board is trying to do. The landscaping requirement was designed to protect the view from adjoining homes and roadways, not to adversely affect agriculture or obstruct the view of open land.

Mr. Dorsey pointed out that in previous decisions on this type of project there was an express condition that the Applicant had to obtain site plan approval and a screening street tree waiver and comply with all the conditions of the Planning Commission site plan approval.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written application for a special exception to construct

large scale solar energy system (SES) on two parcels of land zoned VM (Village Mixed) and AC, (Agricultural Conservation). The Table of Uses, *Code* §190-25.2 Table IV-1, permits large solar energy systems in the VM and AC districts by special exception. Exhibit 1.

2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5, and 9.
3. The Applicant proposes an eighteen (18) acre large scale SES designed to produce two (2) megawatts of power to offset energy use of approximately four hundred (400) homes. The SES is to be constructed solely on the property designated as Tax Map 5 Parcel 113. Parcel 38 is included in the Application for screening and buffer purposes. The system is a community system being built to allow subscribers to purchase renewable energy from a central location. It will be available to current subscribers of Delmarva Power and Light Company, and will tie into that distribution system.
4. The SES has received a favorable recommendation from the Planning Commission, with an additional recommendation that the location and configuration of the proposed facility on Parcel 113 be reviewed to minimize the loss of agricultural land and a condition that the final location and design be approved by the Planning Commission during the site plan review process. Exhibit 8.
5. The SES use is approved in the VM zone, and the Comprehensive Plan directs development to the towns or villages. The VM zone is the most intensive of the village use districts.
6. The scale, bulk and general appearance of the SES are compatible with the adjoining land uses, namely agriculture¹, and with existing and potential land uses. The VM district is open to appropriate development as shown in the Code's Table of Uses, and the Comprehensive Plan directs development to the towns and villages. The Applicant produced an article, Applicant's Exhibit 1, containing references to studies by nationally recognized entities verifying that there is no negative effect on the value of surrounding properties in rural areas. The article addressed utility scale systems, a more intense use than that proposed by the Applicant.

¹ The use of the property for an SES is not in and of itself a conflict with agriculture, however, the Board recognizes that in some cases there may be unintended consequences on agriculture from the screening required by the current development regulations.

7. There will be no glare, or odor from the proposed SES. There will be no lighting on the facility. Runoff from the panels will be handled on site by infiltration. The soils on the parcel are class one soils, and will provide an adequate method of storm water control. The facility will be fenced to prevent trespassing, and will be required to post warning signs alerting the public to any potential hazard. After construction the facility will undergo regular maintenance and repair inspections approximately twice a month.
8. The facility will be unmanned. Most functions will be handled remotely. There will be no effect on schools, police or fire protection or water and sewer. After construction the traffic to and from the site will be minimal, and there will be no effect on county roads. The State Highway Administration of the Maryland Department of Transportation has no concerns about an effect on the state highway, Cordova Road.
9. Once construction on the SES is complete, the only traffic generated on the site will be the regular maintenance and repair visits. The property is in an inland rural area so there will be no effect on marine traffic and little to no effect on pedestrian traffic. The access to the site will be off Connolly Road. The access itself will be a twelve (12) foot gravel surfaced roadbed. Sight lines on Connolly Road are good, and the planned access is far enough from the Connolly Road/Cordova Road intersection not to impact traffic there. The proposed access does not intersect with or conflict with any other driveways. A county road access permit will be required.
10. The SES use will not adversely affect wildlife or habitat. The property is currently in agricultural production, and a majority of it will remain in agricultural production. State regulations require that the interior of the panel enclosure will be planted in a pollinator mix. Storm water management will be handled on site, and a storm water management plan will have to be submitted as a part of the site plan review process.
11. The Board agrees with the Planning Commission that the location of the panel enclosure and the alignment of the panels will need to be reviewed to be certain that agricultural land on this parcel is optimally utilized. The revised plan should consider the owner's ability to utilize the existing irrigation pivot both now and at decommissioning.
12. The Code requires that the maintenance of the site is a joint and several obligation by the owner-operator of the SES and the land owner. Confirming the site maintenance obligation will be an express condition of the special exception approval.

13. The landscaping requirements for screening create what the Board believes to be an unintended consequence in that maturing trees along the borders of other agricultural parcels shade crops and prevent wheat and soybeans from ripening, resulting in the neighbor's loss of a twenty-five to thirty foot (25'-30') strip all along the property line with the proposed SES. The preservation of agriculture is a prime directive of the Comprehensive Plan as well as the *Code*. The Board recommends that the Planning Commission consult with the Applicant and the adjoining owners of agricultural lands to consider a waiver of some or all of the landscaping requirements in order to ameliorate the unintended burden on those agricultural parcels.
14. The Board recognizes that the site plan may be amended to address the concerns identified in testimony before it, as well as those concerns expressed by the Planning Commission. In addition, the solar energy provisions of the *Code* will be reviewed by the County Council and new requirements may be added or existing requirements may be modified. If the site plan revisions made by the Applicant do not change the Applicant's responses to the special exception standards made in oral or written testimony before this Board, the Applicant need not return to this Board for additional approvals, as the responsibility for site plan review is delegated to the Planning Commission.
15. The Board recommends that the County Council review the effects of screening on adjoining agricultural lands and consider a mechanism to receive the comments of the adjoining land owners regarding screening along their boundary with the SES.

For the reasons set out in the Board's findings, Mr. Krebeck made a motion that the special exception No. 21-1736 permitting a large scale solar energy system be **Granted**, subject to the conditions set out below. Mr. Adleman then seconded the motion. There being no further discussion, the Chairman called for a vote. The motion passed five in favor, zero opposed.

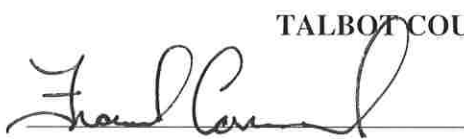
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, ORDERED THAT THE REQUESTED SPECIAL EXCEPTION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A copy of the proposed lease agreement between the property owner and the SES developer shall state that the obligation for site maintenance is a joint and several obligation. A draft of the proposed lease agreement containing that provision shall be presented to the Planning Commission at final site plan review.

2. The Applicant shall obtain final site plan approval from the Planning Commission and shall obtain from the Planning Commission a waiver of some or all of the screening tree requirements for that portion of the property that abuts adjoining agricultural land.
3. The Applicant shall submit a decommissioning plan to the Planning Commission at a final site plan review.
4. The Applicant shall make an application in the Office of Permits and Inspections, and will follow the rules, procedures, and construction timelines as directed for new construction.
5. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the final site plan approval by the Planning Commission.

GIVEN OVER OUR HANDS, this 26TH day of April, 2022.

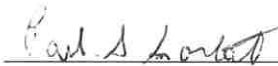
TALBOT COUNTY BOARD OF APPEALS



Frank Cavanaugh, Chairman



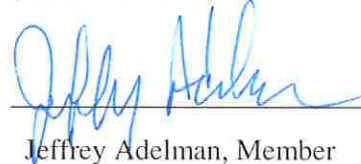
Louis Dorsey, Jr., Vice-Chairman



Paul Shortall, Member

Unavailable for Signature

Zakary A. Krebeck, Member



Jeffrey Adelman, Member